IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.926 OF 2007.

D.K.Nayadaur Education Society ...Appellant

Versus

The Pune Cantonment Board & Ors. ...Respondents

Shri V.S.Gokhale for the Appellant.

Shri Nitin Jamdar for the Respondent No.8.

CORAM : ABHAY S.OKA, J.
DATED : 18th December, 2007.

P.C.:

1. Heard the learned advocates appearing for the parties. The appellant is the original plaintiff. The appellant is a Trust. The first respondent (original first defendant) is the Pune Cantonment Board. According to the case of the appellant, property subject matter of dispute was acquired by the appellant on lease from a Masjid Trust. According to the appellant the building plans were submitted to the first respondent. In the year 1978 a notice was issued by the first respondent under section 185 of the Cantonment Act to trustees of the Masjid Trust from whom the appellant allegedly acquired the property on lease. On the basis of the said notice, an order of demolition was issued by the respondent.

2. According to the appellant, a school is being run in the building in dispute. In the year 1979, the Principal of the school filed a civil suit for challenging the order of demolition passed by the first respondent. The suit was dismissed and an appeal preferred by the plaintiff in the said suit was also dismissed. The contention of the appellant is that the Principal had no authority to file the suit. Reliance has been placed on subsequent settlement arrived at in a suit filed by the trustees of the Masjid Trust against the principal of the school.

3. The present suit has been filed essentially for injunction for protecting the building allegedly used for school on the ground that the plan submitted by the appellant on 24th August, 1978 shall be deemed to have sanctioned in view of sub section 6 of section 181 of the Cantonment Act. The suit was opposed by the first respondent by pointing out that the construction is unauthorised. The trial Court dismissed the suit by holding that the construction of the building is unauthorised and the appellant cannot rely upon deeming provision under sub section 6 of section 181 of the Cantonment Act. The appeal preferred by the appellant before the District Court has been dismissed.

4. The submission of the learned advocate for the appellant is that this is a clear case where a building permission is deemed to have been granted in the year 1978. He submitted that as of today a school is being run in the building in dispute. He submitted that the building will have to be protected.

5. The submission of the learned advocate for the 8th respondent is that the application for regularisation of the suit building made by the appellant has been already rejected and for a long time, the building is not being used for running the school. He has placed reliance on photographs annexed to the affidavit filed by the said respondent.

6. I have given careful consideration to the submissions. The finding of the Appellate Court is that the building plans were submitted in August 1978 after the entire construction was already completed. Therefore, the Appellate Court rightly found that the appellant cannot invoke the deeming provision as the proposal was not in accordance with law. The Appellate Court has also noted that the appellant had preferred an appeal challenging an order passed by the first respondent under section 256 of the Cantonment Act and the said appeal came to be withdrawn.

7. There is nothing on record to show that the building in question has been authorisedly constructed. In view of the concurrent findings of fact, no substantial question of law arises. The appeal is accordingly dismissed with no orders as to costs. As it is alleged that the building in question is being used for running a school, the order of demolition will not be implemented by the first respondent till 31st May, 2008.

JUDGE